ORIGINAL

NO. ~~A-610~~ 83-6405

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

DAN EDWARD ROUTLY

Petitioner,

V.

STATE OF FLORIDA

Respondent.

RESPONSE TO

PETITION FOR WRIT OF CERTIORARI TO THE

SUPREME COURT OF FLORIDA

JIM SMITH
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STATEMENT OF THE CASE AND FACTS

In addition to those facts stated by Petitioner and those found in the opinion of the Florida Supreme Court, the following should be considered.

In mid-1979, Petitioner Dan Edward Routly (also known as Keith Owen Rosencrantz) was traveling with Colleen O'Brien in the Ocala area looking for jobs. (R-887) A local junk and salvage dealer in Reddick employed Routly as a part-time mechanic and general handyman. (R-695) Routly and O'Brien were allowed to stay in a small trailer on the operator's property. (TT-697)

During this period of employment, Routly was seen shooting a blue-steel .38 caliber inexpensive pistol at some fence posts on the property. (R-701) Routly and the salvage operator had a disagreement which lead to the termination of employment. The apparent source of the trouble was that the operator had picked Colleen up from work and instead of driving her directly home, spent approximately five hours at a bar called "Joe's Place." (R-709) Routly and Colleen then went to live with James Gibson in a garage apartment next to Gibson's house. They stayed for three or four weeks.

On one occasion, Gibson saw an elderly man bring O'Brien to the apartment. Gibson had never seen the man before and had not seen him since. (R-729) The last time he had contact with O'Brien was when she called requesting money for purposes of purchasing a bus ticket to go back up north. (R-730) Without notice of any kind, Routly and O'Brien moved out in the middle of one night. (R-725)

Apparently while living at Gibson's apartment, the couple also took up residence at a campground. (R-888) Because they were not getting along, O'Brien left Routly. (R-890)

Although the next sequence of events is not exactly clear, it appears that O'Brien found herself accepting a ride from some man. (R-891) After a discussion, this man gave her a note with his name and phone number and told her that if she needed any help to call him. (R-892) He dropped her off and she

went to see Routly. (R-893) Rogether they went to the campground. (R-893) Their troubles had not smoothed over, and the next morning she called this man and asked him to come pick her up. [Colleen identified the man as Tony and testified that he was the same as pictured in State's Exhibit 1, the deceased. (R-893)]

Tony took Colleen to his house and she began making preparations to take a bus back to Michigan. (R-894) Colleen stayed at Tony's house overnight. (R-899) Tony took Colleen to where Routly was staying and she gathered her belongings and returned to Tony's place. (R-900) Tony left his house leaving Colleen there alone. (R-900) Colleen saw Routly walk by the window and went outside to talk to him. (R-901) Routly was upset and told Colleen that he didn't want her to leave. (R-901) The two went back inside the house and Tony returned. (R-901) Routly started to leave but apparently remained within the house. (R-901, SR-15) Routly pulled a gun on Tony and told him to lay down on the bed. He then tied Tony up and went through his house looking for money. He broke open one or more ceramic banks which he found in drawers. (SR-15) Routly took the change and the couple of dollars from Tony's wallet. (SR-15)

Routly then told Colleen to pack her suitcase and at that time Colleen thought she saw Routly with a gun. (R-902) Whether Routly carried him or whether Tony walked by himself, Tony ended up in the trunk of his own car. According to Colleen Tony walked to the trunk but according to Routly, both hands and feet were tied and Tony was gagged with a bandanna. (SR-15) Routly drove out in the country looking for a field or, apparently, some other deserted place. (SR-16) He noticed that his brake lights were not working, so he pulled the car over, and went to the trunk. As Colleen stood nearby, Routly shot Tony. (SR-17, R-905) Colleen and Routly dragged Tony's body back into the bushes. (SR-17, R-906)

Routly then picked up another woman and her daughter

and all four drove north in Tony's car. (SR-17) He dropped the other woman and daughter in Tallahassee and told her that he had shot somebody. (SR-17) He and O'Brien then drove to Louisiana. Routly took the car to a car wash and cleaned it inside and out trying to get the fingerprints out. (SR-18) He then parked the car at a bar leaving the keys in it hoping someone would steal it. (SR-18)

On June 23, 1979, the body of Anthony Bockini was discovered approximately 15 feet off the road. Time of death was estimated to have occurred from three to five days prior to June 23rd. (R-744) The body was somewhat decomposed, and an autopsy revealed the cause of death as a gunshot would which caused not only fractures of the bones in the head and neck but also injury to the spinal cord at the base of the skull. (R-743, 744) A bullet was recovered from the body at the autopsy. (R-744) That bullet had similar characteristics to those recovered from the fence post on the salvage operator's land. It could have been fired from a weapon described as being purchased by Routly. (R-871) When autopsied, the body had a white shirt with the insignia "Marion Community Hospital" on it, a blue ballpoint pen in the pocket, a name tag bearing the name "Anthony Bockini", a read bandanna around the neck, dark blue trousers and dark blue socks. (R-738,739)

Later that year in early December, Colleen O'Brien was arrested for larceny and was in custody in the City of Flint, Michigan. (R-1002) While in that custody she told the Michigan police officers that Routly had shot a man in Florida. (R-911, 926) At that point in time, there were several outstanding criminal warrants for Routly's arrest from the State of Michigan and the Michigan authorities had been looking for him at that precise moment. (R-1001)

Because of Colleen's statements the Michigan police contacted the Marion County Sheriff's Department and Investigator Alioto and Sergeant Jerald traveled to Flint, Michigan and questioned Colleen O'Brien. (R-1002,225, 240)

On information and belief not appearing in this record,

Flint Police Officer Rutherford, while working with a special surveillance unit, was watching a named address, particularly looking for Dan Edward Routly. (R-985) At approximately 12:45 a.m. on December 5, 1979, he observed through binoculars, a crouching figure enter a car parked at the address being watched. (R-985) All that could be determined was that the person was a white male. (R-986) The person started the car, backed out of the driveway, and took off at a fast rate of speed and without any headlights. (R-986)

Flint Police Officer Black was assigned to marked patrol car duties at that time. (R-989) As a result of contact with fellow officers, he and his partner, who were in the process of looking for Dan Routly and had knowledge of him several days prior to that date, (R-990) intercepted a vehicle traveling at a high rate of speed without its headlights believed to be driven by Dan Routly. When the car stopped, Routly jumped out and began to run and Officer Black chambered a shell in his shotgun and warned Routly to stop or he would shoot. (R-991) Black testified that Routly was arrested for "questioning in regards to a murder in the State of Florida." (R-992) He also mentioned that there were other charges but the other officers "didn't go into those." (R-993)

Once in custody, Routly was met by the Florida officers. When the Florida officers first saw Routly, they introduced themselves, advised Routly of his Miranda rights and stated that they wanted to talk to him about the murder of Anthony Bockini. (R-203),243) Routly replied that he would like to first talk to the Flint police authorities. (R-203,243) He spoke with Officer Hanna and inquired about the various charges that were outstanding in the State of Michigan. (R-1003) The only thing Hanna told Routly was that the Florida case would take precedence over the other cases and that he could not say one thing or another with regard to the pending charges in Michigan. (R-1006)

Routly then returned to the Florida officials whereupon they reminded him of the earlier rights advisement. (R-25) He

then confessed. (SR-13,20)

With regard to the voluntariness of that statement, the record reveals that Appellant was read his rights from a card issued by the Marion County Sheriff's Department. (R-204) Routly acknowledged that he understood his rights and at that time he appeared in a normal state and in possession of his faculties. There was no indication or odor of alcoholic beverages and no indication from his actions that he was under the influence of any narcotic or drug. He had no trouble walking, sitting, or standing. He was articulate and able to be understood, with a very good attitude towards the officer. (R-204-206) Routly was neither coerced nor promised anything. (R-242) He was informed of the nature of the charge against him. (R-251) Possible penalties for that offense were not discussed. (R-251) At no time did Routly refuse to answer any questions. (R-252) Routly was aware that O'Brien was in custody and as far as the officers knew, Routly knew that she was pregnant. (R-253) Routly was not told that O'Brien had given a statement indicating him in the murder. (R-253) He was not told that if he gave a statement O'Brien would be released from custody. (R-225,254) No statements making the unsavory connection between jail and a baby were made or suggested to Routly. (R-227,256) He was not told that he needed to help O'Brien or that the baby would be taken away. (R-256)

REASONS FOR NOT GRANTING THE WRIT

The Confession Issue

Petitioner moved to suppress his confession as evidence. He essentially argued that his Michigan arrest was illegal and thus any statement flowing therefrom was inadmissible and in any event, he confessed only because of unlawful coercion in the form of certain promises. A hearing was held and the motion was denied.

Under Florida law, even though a pretrial order denying a motion to suppress has been entered, a criminal defendant must nevertheless contemporaneously object to the admission of the

contested evidence at trial. Failure to do so waives the right to appellate review of any allegation of error. Jones v. State, 360 So.2d 1293 (Fla. 3d DCA 1978). This authority was specifically adopted by the Florida Supreme Court in this case. Routly v. State, 440 So.2d 1257 (Fla. 1983), at 1260. Also cited was its decision in Steinhorst v. State, 412 So.2d 332 (Fla. 1982), standing for the proposition that an appellate court will not consider an issue unless it was presented to the lower court and further, only the specific contention asserted at trial will be recognized on appeal. Id. at 338.

A review of the trial transcript reveals that a tape recording of Petitioner's confession was offered into evidence as follows:

> BY MR. FITOS: Your Honor, the State of Florida would offer the tape in the prosession of Investigator Alioto into evidence at this time to be correctly and accurately portraying the statement that was made on that evening as testified to the Court by this witness --
>
> BY THE COURT: Any objections?
>
> BY MR. FOX: Yes, Your Honor. I object, other than the Court's prior ruling which I'm aware of, object on the ground that there has not been a proper predicate to its publication to the Jury.
>
> BY THE COURT: Overrule the objection. This is admitted into evidence. (R-1051)

Later the State offered a transcript of the tape recorded confession thusly:

> BY MR. FITOS: Your Honor, at this time the State would move for introduction of the transcript of the tape which has been published to this Jury into evidence as State's Exhibit Number 21.
>
> BY MR. FOX: And as to the admissibility of the transcript, Your Honor, I would object on the grounds that it's cumulative to the tape. It's no more probative than the tape. The best evidence is the tape and it has been published to the Jury. It is of no probative value.
>
> BY MR. FITOS: Your Honor, it is of probative value for the following reasons.
>
> BY THE COURT: Objection overruled. (R-1064)

Applying the above-cited law to the above quoted facts,

the Florida Supreme Court found:

> "At the outset and dispositive on this issue is the fact that the defendant failed to make a contemporaneous specific objection at trial." 440 So.2d at 1260. (emphasis added)

Relying on the above-cited authority, the court squarely held that Petitioner could not raise this issue (relating to the admissibility of his confession) on appeal.

The contemporaneous objection requirement which Petitioner failed to observe was the same one representing procedural default in Wainwright v. Sykes, 433 U.S. 72 (1977). That the Florida Supreme Court considered the issue on the merits should not and, it is submitted, does not alter the fact that there existed an adequate and independent state ground disposing of the issue. Accordingly, since this procedural default would have prevented direct review here, Wainwright v Sykes, supra, there exists no reason to grant the writ. Moreover, it is noted that Petitioner does nothing to demonstrate that the procedural default basis was inadequate or in any other way not accountable for the decision below. This he is required to do in order to establish jurisdiction. Durley v. Mayo, 351 U.S. 277 (1956).

Despite the above, the Florida Supreme Court provided the adjunctive view that even had the issue been properly preserved, it was as a matter of fact and law, meritless. With regards to the legality of the arrest in Michigan, the court held that the record provided ample evidence of probable cause to arrest Petitioner either on the basis of what was told them by Petitioner's girlfriend or the existence of outstanding Michigan warrants for Petitioner's arrest.

Regarding the assertion of promises inducing the confession, the Florida Supreme Court gave complete deference to the factual determination of the trial judge who, after listening to testimony, determined that the true facts were adverse to Petitioner. The Florida Supreme Court found that the record fairly supported that determination and refused to interfere.

440 So.2d at 1261. See Marshall v. Longberger, ___U.S.___, 103 S.Ct. 843 (1983); Sumner v. Mata, 449 U.S. 539 (1981).

Rather than addressing the lack of specific objection, Petitioner makes an emotional plea for review questioning the due process propriety of using a defendant's statement as a source of aggravating evidence. In response, we only note that until John Spinkellink took the stand at his trial, the state was totally unaware of the motive of the killing, to wit: pecuniary gain. It could be considered that the defendant there helped to provide that which resulted in his eventual execution. Spinkellink v. State, 313 So.2d 666 (1975).

Presentence Investigation Report Issue.

Here there is no issue preserved much less one involving a federal question. Attached hereto is a short appendix consisting of the transcripts of two separate sentencing hearings. Even a quick examination of those transcripts shows that Petitioner failed at any point to raise the federal question which he now seeks to argue and perhaps this explains why the requirement of Rule 21.1(h) has not been observed.

Petitioner received the presentence report and was obviously given full opportunity to either explain or deny any of the information contained therein. Nothing was "secret"; nothing was kept from either Petitioner or his attorney. The only thing offered to the trial court regarding the report was a general philosophical presentation against such reports and their use in determining sentence. Although Petitioner gamely endeavored to discredit the concept of such report, he failed to either deny the contents of this particular report or challenge the accuracy of any information. No request was made to present evidence to refute what was stated in the report; no request was made to examine the sources of the information in the report; and aside from general remarks expressing dissatisfaction, no specific objection to the substance of the report was lodged.

Federal constitutional issues attempted to be raised

in a petition for writ of certiorari but not presented to the state courts below will not be decided. Cardinale v. Louisiana, 394 U.S. 437 (1969). Similarly, in Street v. New York, 394 U.S. 576 (1969), this Court declared that when the highest court of the state failed to pass upon the federal question, it will be assumed that the omission was due to want a proper presentation in the state courts unless the aggrieved party can affirmatively show otherwise. See also, Fuller v. Oregon, 417 U.S. 40 (1974); Herndon v. Georgia, 294 U.S. 441 (1935); Beck v. Washington, 369 U.S. 541 (1962).

Of note is the fact the Florida Supreme Court made no mention of this issue whatsoever. Considering that we there urged the lack of proper preservation it is clear to Respondent that the reason for the court's silence was the procedural default occurring by the failure to object on any specific ground of prejudice.

Jury Override Issues.

For the reasons stated immediately above, Petitioner is not entitled to the writ to review the issues he presents regarding the override of the jury recommendation of life. Once again, no issue whatsoever, whether federal or otherwise, was either raised or decided in the Florida Supreme Court. The only error Petitioner argued to that tribunal regarding the sentence of death was that the trial court improperly found factors in aggravation, failed to find circumstances in mitigation, and ignored the jury recommendation of life. However, the constitutionality of the process whether as applied to this case or in general terms was never raised either at trial or on appeal.

Respondent is aware of the grant of certiorari in Joseph Spaziano v. Florida, Case No. 83-5596 and is aware that one of the issues raised in that case is the constitutionality of Florida's jury override procedure. Respondent is also aware, however, that the precise issue was raised in the state court by the petitioner in that case. We likewise note that the Petitioner in this case, apparently unable to present original argument, has virtually copied the language in Spaziano's

petition verbatim in an apparent effort to sympathetically persuade that he too is worthy of having his case reviewed despite the fact that he never raised the question below. Respondent contends that this is an insufficient reason to grant review especially since the other issue in the Spaziano case is the apparent area of concern in light of this Court's continued denial of certiorari in the many cases which have attacked the practice of overriding a jury recoomendation of life.

CONCLUSION

Petitioner has presented nothing to properly demonstrate why his case is worthy of review. To his detriment, the issues he here presents all suffer the fatal defects of either improper preservation below or a total lack of preservation on any basis.

The evidence against the Petitioner was overwhelming and the sentence imposed upon him was based only on evidence presented and was not imposed in reliance on any unconstitutional source. Petitioner did not show nor did he make an attempt to show that anything in mitigation existed. Although not raised by the Petitioner, the Florida Supreme Court reviewed the evidence for its sufficiency, 440 So.2d at 1262, as well as the sentence imposed. That court gave Petitioner the benefit of proportionality review, id. at 1266, and concluded that there properly existed five factors in aggravation and nothing in mitigation. Despite the jury's recommendation, the court held that the penalty was appropriate in this case. Petitioner has shown absolutely nothing why that determination should be disturbed and accordingly, the writ of certiorari to the Florida Supreme Court should be denied.

Respectfully submitted,

April 16, 1984

Richard W. Prospect

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

NO. A-610

DAN EDWARD ROUTLY

Petitioner,

vs.

STATE OF FLORIDA

Respondent.

APPENDIX

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
OF FLORIDA, IN AND FOR MARION COUNTY.
CRIMINAL ACTION.

CASE NO. 79-1270

STATE OF FLORIDA,
Plaintiff,
vs.
DAN EDWARD ROUTLY,
Defendant.

PROCEEDINGS: Sentencing

BEFORE: The Honorable Carven D. Angel
Circuit Judge
Fifth Judicial Circuit of Florida
Ocala, Florida 32670

PLACE: Circuit Courtroom
Marion County Courthouse
Ocala, Florida 32670

DATE AND TIME: September 15, 1980, 9:00 A. M.

REPORTED BY: Charles E. Brandies, R.P.R., C.S.R
Official Court Reporter
Fifth Judicial Circuit of Florida
Ocala, Florida 32670

APPEARANCES: Mr. Jeffrey Pitos
Assistant State Attorney
Fifth Judicial Circuit of Florida
Ocala, Florida 32670
Attorney for Plaintiff

Mr. Ronald E. Pox
Special Assistant Public Defender
Post Office Box 319
[illegible]
Attorney for Defendant

PROCEEDINGS

THE COURT: Dan Houtly.

(Thereupon the Defendant Dan Houtly approached, accompanied by his attorney, Mr. Fox)

THE COURT: Before the Court at this time for a sentencing hearing is Dan Edward Houtly with Counsel, Mr. Ronald Fox, Public Defender, the Defendant having been found guilty after trial by Jury of First Degree Murder, a capital offense. The Court has received and reviewed a Pre-Sentence Investigation Report. Has Counsel and Defendant received a copy of this.

MR. FOX: Yes, we have, Your Honor, including, I should add for the record, the Confidential portion of the Pre-Sentence Investigation, which we both had an opportunity to review.

THE COURT: Are there any comments or statements on behalf of the Defendant at this hearing?

MR. FOX: Yes, Your Honor. First of all, state for the record at this time other than previously noted there is no legal cause why sentence should not be impos the Court having previously ruled on all matters pertain ing to that, but that we are here simply to present matt to be considered by you in determining the appropriate and just and legal sentence. Now, first of all, I'd lik to direct the Court's attention to the Pre-Sentence

Investigation. My comments are not to be critical of Paul Carr, the Officer who prepared the PSI but, rather, if it's critical of anybody it should be of Probation and Parole, in general, its method of presenting Pre-Sentence Investigation material. The reason I say that, and this doesn't apply just to Dan Routly's case but it comes more to the forefront when we're talking of a sentence -- the ultimate sentence and a serious matter of this kind. The circumstances, interestingly enough, in the PSI are obtained from reports of the Sheriff's Department. Paul Carr didn't hear any evidence at trial he didn't come to trial. We all sat through the trial, the Court, myself, Mr. Pitos. The Court Reporter and the Clerk no more about the facts of this case than Paul Carr knows. There's adherent danger in taking the circumstances of an offense from the police reports. Obviously, we know that's not evidence.

The Defendant's statement is also referred to in the Pre-Sentence Investigation. It's presented in -- as if it's a total fabrication. Seven times in the Defendant's statement it is said that he claims something to be true whereas the police reports are elevated to the position of being known given facts. For some reason, the Defendant is presumed to lie not only about the facts of the case but where his mother works, if his

father is dead, things of that nature, not that that is so significant, perhaps, but the Court relies heavily on these Pre-Sentence Investigations and I think we need to take them with a grain of salt.

The recollection of the State's witnesses are elevated to the status of uncontroverted facts while the Defendant's recollections are relegated to the pits of fabrication. He's the only one who knows what went on in this case. He's the only one that will ever know what went on in this case. Yet, Probation and Parole, for some unknown reason, not just in Dan Routly's case but in every case, presumes whatever the Defendant says is a total and absolute fabrication.

Then, you look at the PSI as to criminal history, we'll call it. You've got half a page of a Pre-Sentence Investigation dealing with juvenile arrest history. This Court full well knows, because you sit as the Juvenile Judge, as well as the Circuit Criminal Judge, you have many, many, many juveniles come before you and they are told that at no time will their juvenile record ever follow them into their adult life. It will never be considered by a Court, and the absolute contrar of that is true. We all know it. Why the Courts, the Prosecutors and Probation and Parole mislead juveniles into believing it will never be considered when the

contrary is obviously true, I will never know, and it certainly undermines the juvenile's faith in the system but look -- look at that section of the juvenile histor and look not at the quantity of entries there but look at the quality of the entries, if you want to look at it at all, and it's in there. I assume that the Courts want to consider that. It takes a half a page to expla carrying a concealed knife in high school and being a runaway. That's all that's in there, but it takes elev different entries. It looks like it's a continuing course of criminal conduct. Nothing could be further from the truth. The State took Dan Routly as a child from his parents' home and now, somehow, Probation and Parole wants us to use that in aggravation at his sentencing. Now, the State took him from his family; now, the State wants to take his life, and the reason for taking his life is the State took him from his family because he carried a knife when he was a juvenile in hig school.

The adult criminal record is likewise what I must presume to be intentionally inflated. If Probation and Parole were not so prosecution oriented, they would omit mere arrests and accusations, which the law clearly says you are not to consider anyway. Probation and Parole is presumed to know that. Yet, they include things that

are nol-prossed, dismissed and he's released from. For whatever reason it's in there, I think we all know the intent of including it in there. See the adult record for whatever it is: An attempted B and E, went into a high school and did criminal mischief when he was nineteen years old. That's not to say that that's not B and E. Of course that's B and E. We have those in Juvenile Court around here all the time, but take it for what it was. It's not a burglary; it's not an armed thing. There's no violence to it. It's -- and he got an appropriate -- more than a severe sentence, two and a half to five years. He also has an escape. Now, these are the two convictions. He walked away from a minimum security situation after his wife is alleged to have attempted suicide. He was gone for two months, the PSI says, an escapee from the Michigan State Prison. They couldn't find him, but he was living with his wife for that two months. Now, how hard did they look, if we're to believe the facts contained in the PSI. Not being a law enforcement officer or a detective, maybe I'm not qualified to make this statement but if I were looking for an escapee I just might drop by his wife's house prior to the passage of two months, but that's what it i That's also a non-violent-type situation, as you know not only from the PSI but from the testimony of the

Parole Officer that we had during the penalty phase.

Now, going on to Mr. Routly's social history as reflected in the PSI, and note these things: The Defendant's father reportedly died July of 1976. Probation and Parole doesn't see fit to confirm or deny that, apparently. Either Dan Routly's father died or the reports of his death are greatly exaggerated, which you would think Probation and Parole would take the time to find out rather than to impute some untruthfulness to Dan Routly about the existence or non-existence of his father. The Defendant claims his mother is a nurse. Well, you might think that Probation and Parole would want to talk to this man's mother who has known him for twenty-five years, see what she has to say, and while doing that ask her, are you a nurse, but they don't confirm that. He claims he has four brothers and three sisters. Why don't they find out if he's got brothers and sisters? Why don't they ask his brothers and sisters about this man? That's what you need to know to give an appropriate sentence. Defendant claims he was married and has a child. Is it too much to ask his ex-wife and his son what they think about this man? Those are the things you need to know to do an appropriate sentence, not ask John Pauls at the Jail, who has known him for six months, what should be done to him.

Probation and Parole says his employment is unstab because he worked for Phillip Morris in the junk busine in Ocala for two months -- or three months. That's all he was here. Mr. Morris is no longer in this business, nor is Mr. Gibson, the two employers that were talked about at trial. Now, if his employment is unstable, their business was likewise unstable. When could he have established employment stability? He couldn't nav and I ask you, in looking at the factual recommendation of the Court officials, to consider the recommendation of Gordon Oldham and the atmosphere in which it was made. The time that statement was made Mr. Oldham was facing re-election and opposition in that election, not to say that that would have influenced this statement but just consider that statement and the atmosphere in which it was given, and note that he is so concerned that he's not here today. Yet, had sentencing taken place last Monday, I have the sneaking suspicion he might have been.

MR. FITOS: I object, Your Honor. That has nothin to do with the sentencing matter and I ask that it be stricken from the record.

THE COURT: Overrule the objection.

MR. FOX: Now, the Confidential portion of the PSI was also presented in this case because of the serious

nature. I'm depressed to see that this section of the PSI is even more ludicrous than the factual section. Paul Carr states in the Confidential section some very interesting matters. He could've saved us the expense and effort associated with this trial. The Court, the Jury, the Prosecutor and the Defense lawyer need not have agonized through this trial because Paul Carr knows beyond a doubt that Dan Routly is guilty. If he had only told us that before we went to trial, we could've just brought him in and got this all over and done with. He makes that statement not having heard one shred of evidence. So, what good are these PSIs? Do they really do what we say they do? Absolutely not.

There's an anonymous trustee that we know about in the Jail who we presume to be Charlie Jones, by the way, and the Court may or may not be familiar with him but, in any event, it's purported that he heard Dan Routly confess to this murder and, therefore, the aggravation. Now, the Probation and Parole wants to say that because he did it he should get a death sentence, implying that they weren't so sure life would be adequat which, if it was not so serious, would be absolutely hilarious. Let's assume for the sake of argument that he did confess this to a trustee at the Jail. We heard a confession before the Jury. The Jury found him guilty

said, yes, Dan Routly did First Degree Murder. Is it aggravating to say that he explained it to someone, which we say is total and absolute fabrication and if they had somebody like that they'd have that trustee right here giving testimony, but they don't.

Now, referring to the personal statements that were gotten by Probation and Parole. This is the -- they obtained them, I feel, from the most -- the statements are most outrageous. They obtained them from the most biased, unreliable sources of sentencing recommendations imaginable, and I feel it's an insult to the interest of justice and fair play to ask police officers and jailers for sentencing recommendations about a man they have known only in the confines of the Jail and only for a period of six months. They talked to Phillip Morris who has known the Defendant two months out of twenty-five years. You will recall from the evidence that Phil Morris and Dan Routly had a fight over a woman. Yet, Phil Morris knows the Defendant is very dangerous and should not be let back out. In my mind, Phil Morris is much more dangerous to make such a sweeping generalization without any adequate basis -- to say he's known a man for two months of his entire life and he feels qualified to recommend what sentence this Court should impose. Bob Gibson, likewise. He hasn't had sufficient

basis to know either the Defendant or the facts of the case. These people were not witnesses to any murder. They've heard about it somewhere. This man worked for them, at best, for a period of two or three months. Yet, they feel qualified to make life and death recommendations. Charlie Brown, a Marion County Deputy Sheriff who is the original investigating officer, naturally, my feeling is that in that position he has some bias, just by the nature of his employment. His recommendation is not to let the Defendant out of confinement, and I would suggest to you that in all my remarks as to sentencing it's not that I'm talking about granting Dan Routly probation. The only choice you have is, if you impose the sentence recommended by the Jury, is twenty-five calendar years in the State Prison, which is a very serious sentence, we all know, and we should not lose sight of that when we're discussing the sentence in here. Neither would seem to be lenient. Then, we have comments from John Logue, the Classification Officer at the Jail. His statements are to the effect that he had no problem with Mr. Routly until after the conviction but now Mr. Routly is bitter and a problem at the Jail and, therefore, he recommends death. Now, the logic of that, if that be logic, shows us where our system has miserably failed. Mr. Logue, the

Classifications Officer, is saying a person incarcerated who is bitter, the only way to resolve that problem is to execute them. Well, we ought to execute the whole bunch, then. We ought to be saving the taxpayers some money, and everybody who is bitter and a problem in custody, which I'm sure most people are, ought then, according to John Logue, be executed because they are a problem at the Jail. They're bitter. Fred LaTorre, an officer who I have no idea why his remarks are in here, investigated what Probation and Parole calls a suicide attempt. LaTorre indicates that it was -- it wasn't really a suicide attempt; it was just an escape attempt. Mr. LaTorre must be experienced not only as a police officer but as a psychiatrist, psychologist and medical doctor. He's in no position to be making those kind of remarks and, regardless of his opinion, that coincident has nothing whatsoever to do with sentencing. Lieutenant Pauls, also the jailer, keep in mind when accepting his remarks, that Lieutenant Pauls is a defendant in a civil rights suit filed by Dan Edward Routly; so he has an interest in the outcome of the case. He is also, apparently, an amateur psychiatrist or psychologist. He indicates that Dan Routly has the Charles Manson syndrome, whatever that might be, and he implies that because Mr. Routly is an escape risk you must execute hi

an interesting remark coming from a man who is in charge of our jail down here. They can't keep him locked up, apparently; so the only way to stop an escape risk is to execute them. I think we need new jailers; may need a new jail. The people who work in the system don't have faith in their own prison walls.

The question that keeps coming to my mind in review the PSI is why doesn't Probation and Parole ask somebody who knows more about the Defendant or knows more about the case for a sentencing recommendation. Why not ask somebody other than police officers, jailers and prosecutors? Ask the Clerk of the Court who sat through the trial. Ask the Court Reporter who sat through the trial. They know more about the case than anybody referred to by Probation and Parole with, perhaps, the exception of Charlie Brown, and the Prosecutor. Why didn't Probation and Parole get comments from the Defendant's family, the Defendant's ex-wife? How about Colleen O'Brien who was granted immunity who testified against this man, who lived with this man, who she says has this man's child. She was right here. She convicted this man; yet, they don't even bother to ask her what she thinks is an appropriate sentence. They didn't even talk to the victim's family. Now, Mr. Fites might say, had they talked to the victim's family I'd be complainin

about that, which I would. Let there be no mistake about it, but why not ask them? They've suffered throu this incident. Give them a call to see what they say. They're going to have to live with this case forever, no matter what the sentence is. Surely, they should ha some input, and if you must have comments from jailers or law enforcement officers, why not get them from Michigan officers where this man lived all his life, where they know him personally, where he served four years in the Michigan State Prison. Ask them what they think, not John Pauls who has been down here six months and finds him to be an escape risk. The PSI clearly demonstrates that Probation and Parole is nothing more than an extension of the Prosecutor's Office. That's obvious from the source of the information, as well as the matter on which they present their information, and if we call it anything other than that we're just being oblivious to the obvious facts. I'd just ask the Court to receive the PSI the same way my comments or the comments of the Prosecutor. Knowing that we are on different sides of the fence, we naturally perceive these things somewhat differently. Do not view it as an unbiased recommendation because it isn't.

Let the record be clear that I personally oppose the death penalty in all cases, not that that's here or

there, but how an advanced society such as ours ca use State sanctioned killing of human beings and criminal justice in the same theory has got to be the ultimate in hypocrisy. When you say you're going to dispense justice by committing a killing and ending the life of a human being, you are necessarily talking out of both sides of your mouth, that execution is the answer in any case clearly demonstrates how society in general, and specifically the criminal justice system, has miserably failed, and you who support the death penalty must be saying that execution of certain human beings is good for society. Now, that was an idea of -- brought forth by Nazi Germany and is present today in Iran, that in certain circumstances society will say there are groups of people who the State has the author to end their life and by entering a death sentence in this case, or any other case, we are sanctioning that premise from which Nazi Germany arises, or that type of philosophy, and it's nothing less -- I'm not crying wolf it's got to be. That's the logical progression from the State sanctioning death of any individual. Is it a deterrent? It's a deterrent to the man you execute, obviously. He doesn't do it again, but every new murder that has happened is the best evidence that it is not a deterrent. The State of Florida burned John Spenkelin

until he smelled and the murder rate has done nothing b go up. So are those people deterred? Hardly. Is it punishment? It's punishment, but you're not punishing the Defendant. A death sentence does not punish the Defendant. It punishes everybody else connected with the case. A sentence of death is no punishment to a Defendant because nobody is immune to death. We're all sentenced to death the moment we first breathe life. We're all going to die. I don't care if you're a Supre Court Justice or anybody else, you're all going to die. We're all going to die. The only people you punish by sentencing death are those who know and love this Defendant. You would succeed only in punishing those who hav done nothing to violate society's rules. You also indirectly punish the victim's friends and family because they become part of an extended tragedy. Nothing you do will return the life of the victim, the so-called victim in this offense, but by sentencing Dan Houtly to death you've compounded the problem. Not only did the friends and family of the victim lose their friend or family member but, likewise, it carried on and resulted in the death of another human being which they will have to liv with, you will have to live with, I will have to live with and the Jury will have to live with.

The Romans in t[illegible] of Ceaser abandoned the death

penalty because it was outdated.

Robes Piere in 1791 observed that rather than a deterrent it diminished man's respect for the law. Other less advanced quote unquote societies have apparently found successful alternatives. We're oblige to find ours, though it's not easier and cheaper to do that.

There are presented in an article, Death by Decree by Colin Turnbull, an anthropologist, two irrefutable arguments against the death penalty. They are, one, mistakes; innocent people are executed. Now, if anybod in the Court system does not believe that to be true, they do not understand the system because it is necessarily true in our admittedly imperfect system. We all know how cases are resolved, even by the Jury, but we never know if in fact that man really committed the crime. This is the best syster we've got, but it is admittedly imperfect, and anyone who understands this system of criminal justice is not so naive as to say that an innocent man will never be executed or has neve been executed. Secondly, who actually dies is a matter of extremely bad luck. Statistics show that it discriminates against poor males, first of all, and, second of all, in our system there are so many variable it's almost up to women caprice as to who actually dies

depending on the specific Jury you have, the specific Judge you have, the specific lawyers involved, the Appellate Court, the Governor at the time, the Executiv Clemency Board; you never know, you never know how and when a sentence will be carried out. There are just simply too many variables. This article also points out who's responsible for this medieval abomination that we live with, and it's not the lawyers who are to blame, still less the prison officials who have to implement the law. It's those who make the law, and in a democracy that means the general public. The responsibility lies with the public and either the people are apathetic or else they act blindly out of an ignorance of the facts.

The death penalty is admitted, I think, by all who care to think about it to be barbaric, expensive and detrimental to the mental and physical health of al people involved. It does not contribute to the well-being of society in general, which should be its only justification. It persists merely to provide the public with an illusion that something is being done.

We had a big show. We executed John Spenkelink. We had it on radio, explained in fine detail, "Yeah, now smoke is coming up around his leg; it smells like crazy in here. Oh, yeah, he's dead; I'm not sure.

Let's hit him again. Let's get it on the radio", and what good did it do. It's a circus. Did it deter one murder? I hardly think so. Until we face the harsh facts of what happens on death row, in the execution room and in the office and homes of prison officials, lawyers and Judges, we are not entitled to have an opinion on the death penalty, let alone to call it reasonable and just. The public in general, we must assume, support the death penalty because it is our law. Unfortunately, they don't bother to come to Court. They don't bother to see what influence it has on the Judges, the lawyers, the Defendants, the victims, the Jurors; they don't participate in any of that -- the family members of everyone involved. They just blindly say that perhaps it's good.

But now that I've told you what my feelings are, what you will accept or reject, I think I must face the fact that the death penalty does exist and address myself to that, but I point out that neither the facts nor the law applicable to this case allow imposition of the death penalty. The Jury has recommended life, and those are the same people that found him guilty. They are the people who heard the facts of this case. If you disagree with their -- that their sentence recommendation is inappropriate, then you also cast some

doubt on your agreement with their finding of innocence or guilt, which is an obvious contradiction.

When a Jury has recommended life, the Florida Supreme Court has addressed this question many times as to the ultimate sentence to be imposed, and I'm quoting, now, the Florida Supreme Court in saying: In order to sustain a sentence of death following a Jury recommendation of life, the facts suggesting a sentence of death should be so clear and convincing that virtual no reasonable person could differ; and I cite to the Court Clifford Williams versus State, which is Case Number 50,666, decided by the Florida Supreme Court June 12th, 1980. There was no more complete cite on that at the time. I also cite to the Court Provencens versus State, 355 Southern Second 111, Florida Supre Court 1978; also McCaskill versus State, 344 Southern Second 1276, Florida Supreme Court 1977; Thompson versus State, 328 Southern Second 1, Florida Supreme Court 1976; Tedder versus State, 322 Southern Second 908, Florida Supreme Court 1975.

In all of those cases the Jury had recommended life. The Judge entered a sentence of death. The Florida Supreme Court vacated that death sentence and remanded them to the trial court for imposition of a life sentence or did indeed impose a life sentence

themselves.

A death sentence will be vacated in the absence of any compelling reason for rejecting the Jury recommendation. For that proposition I cite Burch v. State, 343 Southern Second 831, Florida 1977 -- Supreme Court case.

Now, you had evidence at the sentencing phase about the Defendant's prior criminal activity, and I must point out to the Court at this time that the prior history of criminal activity is an improper, non-statutory aggravating circumstance not to be considered by the Judge or the Jury. I cite Mikenas versus State, 367 Southern Second 606, Florida Supreme Court 1979. Now, the Jury heard that business about prior record. In spite of that, they recommended life. Now, I'm suggesting to this Court, you should not concern yourself with that as an aggravating circumstance because it is an improper category and I would object to you entertaining it.

Another thing that should be pointed out in reference to aggravating circumstances, the Florida Supreme Court has said do not double count aggravating circumstances of, for example -- and which applies to this case, attempted robbery and pecuniary gain. Well, the Florida Supreme Court recognized that in a robbery

pecuniary gain is usually involved. So that's not to be counted as two aggravating circumstances but only as one, and I cite to the Court for that proposition Ford versus State, 374 Southern Second 496, a 1979 Florida Supreme Court case. That takes on added significance in this case, I think, where the Jury was instructed that if this murder took place during a robbery or a kidnapping, then you may find it to be First Degree Murder. So the Jury may very well have made this a more serious offense because it was in the course of a robbery. Then to say, well, that's also an aggravating circumstance is to double up, yet, again.

The aggravating circumstances listed in the statute are exclusive and no other matters are to be considered. I cite Miller versus State, 373 Southern Second 882, Florida Supreme Court 1979. In anticipating, perhaps unfairly, Mr. Pitos' remarks about what has happened in the life of Dan Routly since his conviction, there has been much news about that, much notariety, other cases originating -- that's not to be considered by you in arriving at a sentence in this case. It is not an aggravating circumstance by statute; therefore, you are not to consider it.

Whether the matter was heinous, atrocious and cruel, of course, depends on the facts of the case, much

that you heard what I heard from the witness stand. The case of Kampff versus State, 371 Southern Second 1007, Florida Supreme Court 1979. The Florida Supreme Court said where the Defendant shot the victim in the head, that is not an especially heinous, atrocious and cruel murder any more than all murders are atrocious so that was not an aggravating circumstance.

Also, intent to avoid arrest, which is an aggravating circumstance, is not present where the victim is not a police officer unless it's clearly shown the only motive for the murder was the elimination of a witness. In every murder, naturally, you could say it was done to avoid an arrest because a dead person does not turn you into the police. For the proposition that it's -- it's not to avoid an arrest, that's Menendez versus State, 368 Southern Second 1278, Florida Supreme Court 1979.

In Thompson versus State, decided July 3rd, 1980, by the Florida Supreme Court, Case Number 55,697, the Court there approved a finding that the age of twenty-six is mitigation as well as a lack of prior criminal history, pointing out to you at this time the Defendant is twenty-five years old.

I should also point out to you that the sentence or immunity of an accomplice should be considered by the

trial court in determining an appropriate sentence. For that I'll cite Smith versus State, 365 Southern Second 704, 1978; Salvatore versus State, 366 Southern Second 745. The State's chief witness was there, helped drag the body in the bushes, participated in the thing right from the very beginning, at least by her presence. She was granted immunity in exchange for her testimony; so, therefore, she's not here trying to convince you she should only get life on a second degree or only life on a first degree. She just walked right out the door, and that's a factor that you should consider in arriving at an appropriate sentence.

Lastly, I'd like to cite to the Court Brown versus State, 367 Southern Second 616, Florida Supreme Court 1979. The Jury recommended life. The Judge recommended death. The Supreme Court remanded it for a life sentence, and I cite this for the facts of the case. There the Defendant was sixteen years old, which is obviously younger than this Defendant, but he, with co-defendants, forced an elderly man into the trunk of a car. They drove him to a lake, forced the man into the lake, took his money. The Defendant struck the elderly man with fists and boards. Then, they returned to the car and took turns shooting the man with a gun. They left him for dead. As they were driving away, the elderly

gentleman tried to crawl out of the lake. They return to the lake, held his head under the water until he died from drowning, and the Florida Supreme Court said that is a life sentence -- where the Jury recommended life, and surely that does not compare to the facts of the case you have before you here today. To override the advisory sentence of the Jury, you must in effect judicially determine the Jury to be unreasonable peopl because that's the standard, and if you are to overrid them it's because reasonable men could not differ, and if you find that that's the case here, that the Jury was unreasonable in the recommendation of life, how then can you let your conscious accept the verdict.

I don't have anything further. Thank you.

THE COURT: Does the Defendant, Mr. Dan Edward Routly, have any comments in his own behalf?

THE DEPENDANT: No, sir.

THE COURT: Are there any comments or recommendati by the State?

MR. FITOS: Your Honor, the State of Florida would indicate in response to Mr. Fox' presentation, and it's certainly obvious that Mr. Fox had led us away from the facts of the case, that he has led us away from the fact that Anthony Bockini was murdered by this man who stands before us. Rather, he goes and he attacks

the Pre-Sentence Investigation, spends twenty minutes on that attack, and he talks about the fabrication -- that the allegation that Mr. Routly is not telling the truth, and I would bring the Court's mind back to the trial itself, and the Jury found, indeed, that this man lied on the stand. So are we to believe him now?

Mr. Fox would indicate that somehow this PSI is the most important thing that was prepared improperly but he doesn't touch upon the facts of the case or the murder of the other human being. No; he chooses to disregard that and draw the Court's attention to something else. He draws to the attention that perhaps one of the trial attorneys that tried the case is not here. That somehow is of great importance in the Court deciding the sentence in this matter, or the matter of whether or not certain cases are included on the record or not but, Your Honor, I submit to this Court again that it's Defense Counsel attempting to muddy the water, if you will, but let's look at what the statute directs us to do and let's look at his comments on the death sentence.

Your Honor, the law of the State of Florida is that we do have the death penalty and whether I like it or you like it or Mr. Al Lee likes it, who is sitting here, that doesn't matter, Your Honor. It is the law of the

State of Florida. I am to uphold the laws. Mr. Fox as an officer of the Court is to uphold the laws and Your Honor being an elected official of this County and the State, you also are sworn to uphold the laws of the State of Florida, whether you personally like the death penalty or not. The people have spoken to the Legislature and the death penalty is the law in the State of Florida, and like myself you also are sworn to uphold that law, Your Honor. So I submit that all of the philosophical presentations, the comparisons to Nazi Germany, if you will, by Mr. Fox have no place in the sentencing, for you also are to uphold the law.

Let's look at what the statute says, Your Honor, for that is what we are here to consider. We are not here to consider the words of Mr. Fox who brings up Mr. Routly's wife and child who, by the way, he left with another woman and he rode around Florida for some time -- to bring up the emotion. No, Your Honor; we look at what the statute requires, and under those aggravating circumstances the Defendant was engaged in a robbery when he committed this murder. What did he do Your Honor, you sat there as I did, that he entered this man's house, this elderly gentleman, a volunteer for the Marion County Hospital, he entered his house and when he came home he pulled that weapon, forced him into

the man's own bedroom, made him lie down on the bed, took his money and, if that wasn't enough, he just didn't leave him there, did he, Your Honor? No, sir. What did he do? He took that weapon or that -- that he had in his possession and he bound up that elderly gentleman in his own home, Anthony Bockini, and he carried him out to his own car and he threw him into the trunk and he drove to an isolated field, and you remember the facts as well as I, Your Honor, and because he didn't like what he did by pulling out those lights, he stopped the car, took Mr. Bockini out of that vehicle, put him on the floor and he went ahead and shot him, as Mr. Bockini, wide-eyed, looking up at this man as he shot, and he shot. There's no doubt about that, and as the aggravating circumstance indicat it was in the commission of a robbery, an aggravating circumstance that this Court must take into consideration pursuant to the laws of the State of Florida. Likewise, Your Honor, the capital felony was committed for pecuniary gain. Not only did he commit the robbery but he also took the man's car. He drove it up to Louisiana; pecuniary gain, two aggravating circumstance

What more could be heinous or atrocious than the sanctity of a man's dwelling, coming home after being a volunteer at the Marion County Hospital, coming home

to what, the man who could've walked out that back door but chose not to because he knew what he was going to d The sanctity of that dwelling meant nothing to him, nothing at all, just like the breaking and entering and his prior conviction mean nothing at all to him whatsoever, just like the people incarcerating him in the Michigan State Prison meant nothing at all to him, just like the life of Anthony Bockini meant nothing to him at all He chose not to leave that dwelling of Mr. Bockini's when he could've, but he came back and robbed him and he tied him up and he gagged him with his own bandana and he took him out to the car and he knew what he was going to do.

Each case must be decided on its own facts, Your Honor. That is indeed heinous; that is indeed atrociou

And what about the mitigating? We have three aggravating, Your Honor. Mr. Fox will say, take the ag of the Defendant into consideration. Well, let's look at the whole picture of this Defendant. We have individuals who are twenty-five and act nineteen. We have individuals who are twenty-five and act sixteen, and we have individuals who have led a hard life who are twenty-five and from their experience and cunning and knowledge could indeed be forty. This is the kind of man that we have before Your Honor, not chronological

years but the man, twenty-five going on forty. That's the only mitigating circumstance that this man has in his favor. Certainly, Your Honor, after reviewing those facts, they do not outweight the aggravating.

Mr. Fox would attack all the individuals that made statements, I suppose, except for his own and would indicate, my goodness, we didn't do a thorough job and we shouldn't even consider these people but, Your Honor I would submit it is like a puzzle, that each piece is important, to look at the man, each piece, and after that conviction each piece is important. What else is important? What did this man do after conviction? I submit, Your Honor, the Court can take into consideration that he attempted to smuggle a weapon into that Jail where he was incarcerated -- to do what with? To do what with?

Your Honor, the people of the State of Florida whom I represent by and through the Legislature who have made the death penalty the law in the State of Florida, contrary to any personal beliefs or philosophy by Mr. Fox or anyone else, and pursuant to the aggravating versus the mitigating, I would ask that the death penalty be imposed on this Defendant. There is no alternative, Your Honor, that this man be removed from society for that heinous and atrocious crime of murder of Anthony

Bockini, death by shooting, and as to the justice and fair play requested by Mr. Fox, I would ask Your Honor who spoke for Anthony Bockini that evening when this ma: shot him to death. No one. Death, Your Honor. Thank you.

THE COURT: The Court -- are there any other matter on behalf of the Defendant at this time?

MR. FOX: Your Honor, just -- not to be any more long-winded than I've already been, but just to suggest that the evidence presented at trial should be considere by you and in the penalty phase before the Jury. My position is that the mitigating factors present are the Defendant's age, lack of significant criminal history and also the psychiatric reports which were received at that time.

THE COURT: All right. This concludes the sentencing hearing. The Court will order a transcript of this hearing and after a review of the transcript of the hearing and all the matters that are to be considere in this case, the Defendant will be notified when to return to Court for the imposition of sentence in this case. Thank you; that will be all at this time. The Defendant is remanded to custody.

MR. FOX: Thank you, Your Honor.

(Thereupon the proceedings ended).

C E R T I F I C A T E

STATE OF FLORIDA)

COUNTY OF MARION)

I, CHARLES E. BRANDIES, Certified Shorthand Reporter, Registered Professional Reporter, and Official Court Reporte Fifth Judicial Circuit of Florida, do hereby certify that th Sentencing in the case of State of Florida versus Dan Edward Routly, Case Number 79-1270, was heard at the time and place set forth in the caption hereof; that I was authorized to and did report stenographically the proceedings, and that the foregoing pages, numbered 1 through 31, inclusive, constitute a true and correct transcription of my said stenographic report.

WITNESS MY HAND AND SEAL this 16th day of September, 1980, at Ocala, Marion County, Florida.

Charles E. Brandies

Charles E. Brandies C.S.R.
Marion County Court House
Ocala, Florida

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR MARION COUNTY

CRIMINAL ACTION.

CASE NO. 79-1270

STATE OF FLORIDA,

Plaintiff,

vs.

DAN EDWARD ROUTLY,

Defendant.

PROCEEDINGS: Sentencing

BEFORE: The Honorable Carvin D. Angel
Circuit Judge
Fifth Judicial Circuit of Florida
Ocala, Florida 32670

PLACE: Circuit Courtroom
Marion County Courthouse
Ocala, Florida 32670

DATE AND TIME: November 24, 1980, 9:00 a.m.

REPORTED BY: Charles E. Brandies, C.S.R.,
R.P.R., Official Court Reporter
Fifth Judicial Circuit of Florida
Ocala, Florida 32670

APPEARANCES: Mr. Jeffrey Fitos
Assistant State Attorney
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Ocala, Florida 32670
Attorney for Plaintiff

Mr. Ronald E. Fox
Special Assistant Public Defender
Post Office Box 319
Umatilla, Florida 32784
Attorney for Defendant

P R O C E E D I N G S

BY THE COURT: On the Sentencing Docket, Dan Edward Routly.

(Thereupon, the Defendant Dan Edward Routly approached, accompanied by his attorney, Mr. Fox).

BY THE COURT: Before the Court at this time for sentencing is Dan Edward Routly. This is his Counsel, Mr. Ronald Fox. I would ask Counsel at this time if there is any cause why the Court should not impose sentence.

BY MR. FOX: Your Honor, as to legal cause, there' one matter that I would like to recite for the purposes of the record as to a legal prohibition to sentencing going forward at this time. The legal objection to sentencing proceeding at this time will be based on the case of Dan Edward Routly, Plaintiff, versus Larry Jerald, et al., Defendant, Case Number 80-91, a Circuit -- or a civil case, rather, presently pending in the United States District Court for the Middle District of Florida, Ocala Division. Without reciting -- there has been an order entered in that case, and I would like simply to recite some of the pertinent portions of that order into the record at this time. It was signed by The Honorable Charles Scott, this order, on the 5th day of November. From the order, it's not clear -- it was

entered in November, '80. I'm not certain of the date. Essentially, it says that -- and I'm quoting now from the order: Although the Plaintiff filed his Complaint under 42 U.S. Code, Section 1983, the Plaintiff is seeking relief in the nature of habeas corpus. Consequently, on July 8th, 1980, this Court stayed the Plaintiff's case pending his exhaustion of State remedies via a Petition for Writ of Habeas Corpus. In that order, the Plaintiff was directed to advise the Court when he had exhausted his State remedies and to provide the Court at that time with substantiation of said exhaustion. Plaintiff has complied with the Court's order by filing a decision from the Fifth District Court of Appeals of the State of Florida denying Plaintiff's Petition for Writ of Habeas Corpus. As the Plaintiff has now exhausted his State remedies, he can bring this habeas corpus action in Federal Court citing Preiser versus Rodriguez, 411 U.S. 475, 1973. Consequently, the Clerk of the Court will be directed to transfer this case to the Habeas Corpus Docket. Issued at Jacksonville, Florida, this 5th day of November, 1980, The Honorable Charles R. Scott, United States District Judge.

And the other matter to cite in that particular regard would be Florida Statute 79.12, which refers --

which says: When in any criminal prosecution a Writ of Habeas Corpus is applied for by any person charged with any criminal offense and the accused has been remanded to the custody of the Court to which such application is made, and my argument -- that would not be the Federal Court -- a supersedeas of that order made on appeal being taken to an appellate court shall not prevent the State from proceeding with the prosecution of the accused pending the decision of the appellate court on the habeas corpus, but the State may prosecute the accused as if the appeal had not been taken in habeas corpus. If the accused is convicted of the charge, the Court shall withhold imposition of sentence and final judgment until the appellate court has determined the issues presented in the habeas corpus. Now, the State Court has determined the issues in the habeas corpus. They have -- and Mr. Routly has necessarily had them determine that to exhaust the State remedies, but the habeas corpus is now pending in the Federal Court pursuant to Judge Scott's order, and I would suggest to the Court that for those reasons that's a legal prohibition to sentencing going forward and I don't have anything else to add other than that.

On the legal prohibition to the sentence, I would however, raise at this time an objection to a sentence

other than life in prison at this juncture in that this trial was concluded July 18th. We were here till the late hours of the night arguing to the Jury so we could get an advisory reading from them. It's now late November and we're here awaiting sentencing, and I'm suggesting to the Court that based on that delay in time that Mr. Routly has been awaiting sentencing in the Marion County Jail, that to impose any sentence, let me say, would be cruel and unusual punishment. To impose any sentence other than life would be cruel and unusual punishment, based on the facts -- the long delay which Mr. Routly has had to face in the Marion County Jail.

The only other matters I have to say in reference to sentencing are not any legal prohibition to going ahead with sentencing but, rather, the legal guidelines to what a -- my understanding of the law is -- a legal sentence in this case. We've previously cited to the Court many cases wherein the Jury recommended life and the Court imposed death. The Supreme Court reversed, or vacated the death penalty, at least, and imposed a sentence of life. At one prior proceeding in this case, the Court indicated that I had not provided the Court with cases wherein the Jury had recommended life. The Judge had imposed death and the Supreme Court had

upheld the imposition of death. Since that time I have found certain cases where that is the case and I am equally as certain that the Court has found those cases with or without the assistance of the State Attorney.

Recently, James Leroy Pippin's death penalty was vacated by the Florida Supreme Court. He was convicted of the first degree murder of his parents over a $64 credit card bill, some type of discussion that he had planned this murder and a suggestion that it was for the $64 credit card bill. Anyway, he fired -- Mr. Pippin, the evidence showed, fired repeatedly at the parents -- the back of their heads until his pistol was empty. He then reloaded and emptied it again in the back of his parents' heads. Now, the Supreme Court said that didn't justify the imposition of the death penalty; they vacated it. The significance of the Pippin case to me, and perhaps to the Court as it relates here, is that Justice Adkins and Boyd dissented in the Pippin case, and Justice Adkins dissents oftentimes when the death penalty is vacated, and in his dissent he listed six cases wherein the Jury had recommended life. The trial judge had overruled that recommendation and imposed death, and that death sentence was upheld by the Florida Supreme Court. So there are cases wherein that happens, but if -- if the

Court has read certain of these cases, and I'm sure that you have, you have found in those situations that the justification for imposing the death in disregard of the Jury's recommendation is that the crime or the murder has been found to be heinous, atrocious and cruel. One maybe striking example is Gardner versus State, 313 Southern Second 675. This was a Citrus County case; Judge Booth, who was a Circuit Judge -- still in our Circuit, he disregarded the Jury recommendation of life. He imposed death, and the Supreme Court with two dissents affirmed that imposition. They found it was -- that murder was especially heinous, atrocious and cruel, based on medical testimony that the decedent's body bore at leas 100 bruises, large patches of healthy hair had been pulled from her head. There were tears inside her vagina caused by a broom stick, bat, or a bottle, and that the bone located in the pubic area had been broken into small pieces by a blunt instrument.

I would never say there's a case where the death penalty ought to be imposed. I am firmly committed tha it should never be imposed, but the facts of the Gardner case certainly show what the Supreme Court considers to be a heinous, atrocious and cruel murder, and I'm certain that that would probably fit the

definition.

In the Routly case, the case that's before you now, recall the medical testimony that death was caused by a gunshot wound to the head, not to say that that's a good way to die, just to say that that is not heinous, atrocious and cruel, and in fact the Court has held in situations where one gunshot wound to the head is -- is not.

Just citing for the record the other cases where the death penalty has been imposed in contravention of the Jury recommendation is Sawyer versus State, 313 Southern Second 680. That's the Supreme Court of Florida, 1975, and there I distinguish that Defendant from Mr. Routly's case on this, that there was an armed robbery but the Defendant had a prior record of multiple robberies. In fact, the Court was aware that he had 13 pending armed robberies against him at the time. He had a two hundred dollar a day drug habit, and that the -- during the course of the trial the Defendant had communicated to the bailiffs that he would take reprisals against persons conducting the trial if he had been found guilty. Also in the Sawyer case, the Appellant put on no evidence in mitigation, which you will find in several of these cases where th Court disregarded the Jury recommendation. The

Appellant put nothing on in mitigation, which we did in the Routly case.

For the purposes of the record, I will also cite to the Court Hoy versus State, 353 Southern Second 826. It's a murder that happened down in Dunedin, a double murder rape where the Defendant is found to have raped a 16-year old girl and killed her and her boyfriend. There, the Jury recommended life; the Judge imposed death. It was upheld. There they go through the co-defendant sexually assaulting the 16-year old young lady, both vaginally and anally, shooting her boyfriend in the face in her presence and then ultimately shooting her twice in the head. They said, that we will uphold the death penalty. Of course, it was in the commission of a rape, you must remember, and the mitigating evidence there was almost non-existent.

In Barclay versus State, 343 Southern Second 1266 the Jury recommended life. The Judge imposed death. That was upheld. There, the defendants were part of a group that termed itself the Black Liberation Army whose sole purpose was to indiscriminately kill white people and start a revolutionary war, which they proceeded to do in this case, and the death penalty was imposed.

The other matter that I need to cite to the Court

is Douglas versus State, 328 Southern Second 18, a 1976 Supreme Court case. There we have Justice England dissenting, but the -- there the Defendant took a husband and wife into the woods, killed the husband, raped the wife, had beaten the husband over the head with the butt of the rifle until it shattered in the presence of the wife, and ultimately ended up killing him.

The last case I'll cite is Dobbert versus State, 328 Southern Second 433. There there's no mitigating evidence presented. I think all that needs to be said about the Dobbert case, perhaps it's more -- more shocking than any of the cases previously cited. The Defendant at the time of sentencing stood convicted of the first degree murder of his nine-year old daughter, the second degree murder of his seven-year old son, the torture of his 11-year old son and the child abuse of his five-year old daughter. In the -- the nine-year old daughter he had killed, he had beat her in the head until it was swollen. He had burned her hands. He had poked his fingers in her eyes, beat her in the abdomen until it was swollen as if she were pregnant, knocked her against the wall when she fell, kicked her in the lower part of the body, held her under water in both th bathtub and toilet, kicked her against the table which

cut her head. Then he sewed up the wound with a needle and thread, scarred her head and body by beating her with belts and boards, and so on and so on and so on, and it goes on: Made no effort to get her medical help, kept her out of school so nobody would see the bruises, kicked her in the stomach with shoes on, beat her continuously for 45 minutes at a time, choked her on the night she died, and when she stopped breathing he placed her body in a plastic garbage bag and buried her in an unmarked grave.

So it's not a situation where this Court -- or, rather, where a court cannot disregard the Jury recommendation and be upheld and impose a legal sentence, but when that's going to happen, and I won't say anything further, the principle of law is that the evidence must be of such a nature that the Jury -- you find that -- from the evidence that the Jury were unreasonable people, that reasonable minds could not differ as to the sentence, that the sentence should be death, and in these cases that I've cited to the Court I suppose reasonable minds could not differ because of the facts of the case they were so heinous, atrocious and cruel that they were upheld, but in the absence of that, which we have here, the only legal sentence this Court could impose would be a sentence of life, and I

know I don't have to remind the Court of this, but that sentence carries with it a minimum mandatory of 25 calendar years in the State Prison, which in and of it -- depending on your philosophical outlook, may be a more serious penalty than death itself. I don't have anything further, and I would ask the Court to inquire of Mr. Routly if he'd like to say anything prior to imposition of sentence.

BY THE COURT: Mr. Routly, do you have any statements on your behalf before the imposition of sentence?

BY THE DEFENDANT: No, sir.

BY THE COURT: Any response by the State?

BY MR. FITOS: Yes, Your Honor. In response to the legal objections that there is a legal cause to not dispose of the sentencing matter on this date, we'd indicate that the Statute cited, we reflect, would anticipate the filing of writs prior to a trial. If Your Honor would interpret the particular Statute in the way Mr. Fox requires you to interpret it, then each and every defendant after having been found guilty, his defense attorney would automatically file a writ which would toll the sentencing. Obviously, it's not happened. It's not what the Legislature had intended in the Statute under the close reading of the wording. In

addition, there is no doubt that there is a pending civil suit in this matter which may be interpreted pursuant to that order as a writ. I would indicate that this is a normal procedure in the appellate proceeding and that there is no cause why this man should not be sentenced at this time, and it would in no way affect that particular writ. That's all I have to address as to that particular point. We would ask that the Court would proceed with the sentencing, finding no legal cause to prevent that sentence.

As to the factual allegations as to the case law and as to the Statute which this Court must consider on this date, most specifically Florida Statute 921.141 which Your Honor knows is the controlling Statute in the sentencing of capital cases, that under sub three we would indicate to the Court that the wording of sub three, the findings of a court -- the finding of death even though an advisory sentence has been rendered by a jury, would indicate that the Court's obligation under the law is to look at the facts of this case and put them within the aggravating and mitigating circumstances under that Statute. Those had been presented at earlier sentencing hearings and the Court is well familiar with those. I would ask the Court to look at those aggravating circumstances and I feel tha

the applicable ones in this particular case are a, d, f, g and h, and those being in reverse order, the heinous, atrocious or cruel aspect, the capital felony was committed for pecuniary gain, that the capital felony was committed while the Defendant was engaged or was an accomplice in the commission or attempt to commit robbery, burglary and, in fact, did, and that in addition, although the State does not charge him with that, and that in addition the capital felony was committed by a person under sentence of imprisonment, this man standing before you having been on parole and had absconded from that parole, the interpretation of that matter having been indicated, that parole does no release the man from the sentence but is giving him an obligation to go back into society under the penalty o should he flee or violate a law he is immediately incarcerated again. He was on parole and he fled the State of Michigan.

Based on those criteria, Your Honor, and weighing those with the mitigating circumstances as the Court i sworn to do, the only mitigation which could possibly be argued is the age of the Defendant at the time of the crime. However, even that, Your Honor, I could se it if the man was 17 or 18 or had no prior crime -- criminal record, but this is not the case here. This

is not the case here.

Let's look at the Statute; let's look at the case law that Mr. Fox would have the Court look at, and I think the point that needs to be made here amidst all this case law is the following, that each case must be analyzed based upon the facts as the Court sees it, and the guidance as Mr. Fox had indicated is the Supreme Court has ruled both ways. There are different interpretations, and what the Court has to do is not to be concerned with whether it shall be overruled or not overruled but simply look at the facts and apply the Statute that is required to do, and I would submit, Your Honor, if the Court in this matter looks at these facts and takes the aggravating and the mitigating -- takes the aggravating and mitigating and is desirous of upholding the law as foreseen in this Statute, then there is no other decision but death, and we would ask the Court not to shirk from its duty. Certainly, the Prosecutor, the Defense Attorney, treat any capital case very seriously, and I would understand the Court's concern to sentencing anyone to the death penalty, but we would ask on behalf of the people of the State of Florida that the law be carried out, that this individual, guilty under the aggravating circumstances and not being absolved by the mitigating would be

sentenced to that penalty of death for murdering -- there is no other nicer way to say it -- than murdering Anthony Bockini, and we would talk about heinous, atrocious and cruel. What could be more heinous, atrocious and cruel than an elderly gentleman in his retired years, having come down as -- having a productive life and working hard for that retirement and having himself a small home in Marion County, because Florida is a good place to live, and having that little home and his wife having died and, as you recall from the facts, having a criminal, a murderer, come into his home, the sanctity of that dwelling, where an individual can expect to be free from harm and intrusion, and as the facts would indicate that the man not only entered that home but tied him up, took hi -oney, pushed him on the bed, and the man was in fear for his life, as well he should be, and he knew that his time had come and he was so afraid -- in that sanctity of his home; that elderly gentleman being carried out of his own home, tied up, placed in his own car, knowing that he was going on the death ride. Just imagine, Your Honor, what went through his mind on that death ride in that closed trunk in his own car, as he scratched and scratched to try to get out, tearing off the wires, hoping in vain that he could escape, but he

couldn't. What is more heinous, atrocious than someone riding around in his own closed car, knowing that death is near, knowing that his life is going to expire because a murderer is going to take it -- than the man who stands before you, and there's no pleasant way to say it any other way. Defense attorneys try to personalize; defense attorneys try to remove it from what the facts were. There's no way to paint this murder in the first degree other than it is heinous, atrocious and cruel, and he stopped the car in a very, very remote area, and he threw Mr. Anthony Bockini, that retired individual who came to Florida to seek peace in his old age and retirement, trusting in the laws of the State, and he threw him on the ground and he took that pistol and he shot him dead as the old man looked up at him, in fear of his life as well he should have been, and Mr. Anthony Bockini is murdered, and there's no other nice way to say it. There is no way to make those facts anything but heinous, atrocious and cruel. When you weigh everything else, Judge, as the Statute requires, aggravating, the mitigating cannot weigh it down. I think the only choice, Your Honor, is to uphold the trust that the people have put in you as their elected Circuit Judge and do as the Statute, with that aggravating circumstances, requires, not tha

it's ever not a difficult situation for any Judge but the law requires that the man who murdered in cold blood Anthony Bockini be given that sentence of death, based on the facts and not anticipating what the Supreme Court might or might not do, for they review all of these sentences.

On behalf of the People of Marion County, and the People of the State of Florida, I ask that Dan Edward Routly be sentenced to death by electrocution, that the Judge would uphold the laws of the State of Florida and the truth which the people have put in him. Thank you Your Honor.

BY MR. FOX: Excuse me, Judge. If I may just very briefly, and I promise to be brief this time. Maybe - perhaps one who is less familiar with the system here in Marion County might -- might have got the impression that Mr. Fitos was suggesting to you that the imposition of the death penalty might be politically advantageous and a good way to get votes, but I know the Court is beyond that; so I'll just disregard that.

As far as doing what the People of the State of Florida want to do, you told the People of the State of Florida who were in that box over there, all twelve of them, what the law was and how they should interpret it, and the law says they must be convinced beyond a

reasonable doubt as to the propriety -- appropriateness of the sentence. They deliberated for well in excess of an hour and came back to you and said that they felt an appropriate sentence was life. They had all of those burdens. They listened to Mr. Fitos' argument, very similar in tone and substance as you have heard today, and they were not swayed by that argument. They listened very attentively. They were twelve people; you are one man. Of course, you are the Judge and you do have the final say, but certainly you must take into consideration their recommendation. They did it at the conclusion of the trial, based on the evidence in the trial and after the trial. As far as myself and other defense attorneys trying to depersonalize a case such as this, I don't think anything could be further from the truth. I will live with this case forever, as will you and will the Prosecutor, and I have not discussed this with my client at this point but I'll do it, anyway. In an effort not to personalize the case at all, we extend our sincerist invitation to Mr. Fitos to be personally present in the Florida State Prison at the time death penalty is imposed, if that's the sentence of this Court, and that he feels that that's appropriate. I think we all ought to be there and watch it carried ou

I think the law is very clear on this case. The fact that the victim's wife had died and he's a retired man of course that doesn't matter. I don't make light of all that. It's a murder; of course, it's a murder. It's a serious crime. That's why we're here, but I think the law and the facts applicable to this case an the recommendation of the Jury should be upheld. Normal situations the State -- that sentencing is telling you how sacred the jury system is and that you should impose their will, and this is the one exceptio when they seem to feel that the jury is not quite so reliable. I don't have anything further. Thank you.

BY MR. FITOS: The State has nothing further, You Honor.

BY THE COURT: Before the Court for sentencing stands Dan Edward Routly, assisted by Counsel, Ronald Fox. Counsel has suggested a legal cause why the Cour should not proceed to sentence, that being a proceedin pending in the Federal District Court for habeas corpu The Court finds that that is an insufficient cause and that there is no legal cause why the Court should not proceed to impose sentence at this time in this case.

The Defendant was tried upon an Indictment for first degree murder returned by the Grand Jury i panel in the Circuit Court of the Fifth Judicial Circuit in

and for Marion County, Florida, for the Fall Term of 1979. The said Indictment charged the Defendant with the premeditated murder of Anthony Francesco Bockini by shooting him with a firearm. The Jury returned its verdict on said Indictment on July 18, 1980, finding the Defendant guilty as charged of murder in the first degree, and upon said verdict the Court adjudicated the Defendant guilty as charged of murder in the first degree. The Jury which tried the Indictment was impaneled to hear evidence in aggravation and mitigation and to render its advisory sentence pursuant to Section 921.141 of the Florida Statutes. On July 18, 1980, that Jury recommended that the Court impose a sentence of life imprisonment upon the Defendant. The Court has considered the evidence presented at trial upon the Indictment, the evidence presented at the separate sentence proceeding on the issue of penalty, the Jury's advisory sentence, the pre-sentence investigation report prepared by the Florida Department of Corrections, Probation and Parole Services, and the statements and recommendations of Counsel for the Defendant and the State presented at a sentencing hearing on September 15, 1980, and at this proceeding today. Upon consideration of all of the said matters, the Court hereby finds the following aggravating and

mitigating circumstances required to be considered by Section 921.141 of the Florida Statutes.

As to the aggravating circumstances, the Court finds that prior to the proceedings today the State had not contended nor had it proven that this capital felony was committed by a person under sentence of imprisonment or that this Defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person, or that this Defendant knowingly created a great risk of death to many persons or that this capital felony was committed to disrupt or hinder a lawful exercise of any governmental function for the enforcement of the laws. The State has contended at this proceeding that this capital felony was committed by a person under sentence of imprisonment. The Court, therefore, finds that these four aggravating circumstances do not apply to this capital felony, the State, having not previously intended on proving that three of these aggravating circumstances exist, and I find that the State has not proven that the additional aggravating circumstance that the capital felony was committed by a person under sentence of imprisonment has not been proven in this proceeding and I find that that aggravating circumstance does not exist in this case.

As to the other five aggravating circumstances, the Court finds that it has been proven beyond and to the exclusion of any reasonable doubt that this capital felony was committed while the Defendant was engaged in the commission of kidnapping and that this capital felony was committed while the Defendant was engaged in flight after committing a burglary, and further finds that this capital felony was committed for the purpose of avoiding or preventing a lawful arrest, and further finds that this capital felony was committed while the Defendant was engaged in the commission of a robbery and while the Defendant was engaged in flight after having committed a robbery and, therefore, this capital felony was committed for pecuniary gain, and the Court further finds that this capital felony was especially heinous, atrocious and cruel, and that this capital felony was a homicide and was committed in a cold, calculated and premeditated manner, without any pretense of moral or legal justification.

As to the mitigating factors under Section 921.141 of the Florida Statutes, the Court finds that the Defendant has not contended nor has he proven that he has no significant history of prior criminal activity or that the capital felony was committed while he was under the influence of extreme mental or emotional

disturbance, or that the victim was a participant in the Defendant's conduct or consented to the act, or that he was an accomplice in the capital felony committed by another person, and his participation was relatively minor or that he acted under extreme duress or under the substantial domination of another person, or that the capacity of the Defendant to appreciate th criminality of his conduct, or to conform his conduct to the requirements of law was substantially impaired. Therefore, the Court finds that none of these six statutory mitigating circumstances exist in this case.

The only statutory mitigating circumstance which the Defendant urges upon the Court is his age at the time of the crime.

Having observed the Defendant's conduct throughout this trial and having considered the evidence of this crime, the pre-sentence investigation report, the psychiatric evaluation of Doctors Rafael J. Gonzalez and Fausto A. Natal, the Court finds that the Defendant was 25 at the time of this crime and that his age at that time is not a mitigating factor in this case.

In addition to the statutory mitigating circumstances, the Defendant contends as mitigation in this case the fact that an accomplice was granted immunity, and also the holding of the Supreme Court in

Brown versus State, 367 Southern Second 616. The Court finds from the Defendant's own admission that the only person present at the commission of this capital felony knew absolutely nothing about the Defendant's plan or intention to commit this crime and, therefore, there was no accomplice to the commission of this crime for which the Defendant was solely responsible.

The Court has considered the facts of Brown versus State and finds that they are distinguishable and that that case furnishes no evidence of mitigation for this case. Therefore, the Court finds that absolutely no mitigating circumstances exist in this case, statutory or otherwise.

Considering that five statutory aggravating circumstances exist in this case and that no mitigating circumstances exist, statutory or otherwise, the Court finds that this is an aggravated capital felony in which the death penalty is presumed to be the appropriate penalty unless the mitigating circumstances outweigh the aggravating. Since there are no mitigating circumstances, the Court finds that they do not outweigh the aggravating circumstances. The Jury has recommended a life sentence. The Court finds two compelling reasons to reject that recommendation. First, that this is an aggravated capital felony in which the law of this

State presumes that death is the appropriate penalty unless outweighed by mitigating circumstances, of which there are absolutely none in this case and, second, that in comparison to the facts of other capital cases in Florida in which the death penalty has been upheld, equal justice under the law would have a hollow ring if death were not imposed in this case.

The Defendant having been asked if he had any cause to show why sentence should not be imposed in this cause and the Court having found that no such cause has been shown, it is, therefore, the judgment, order and sentence of the Court that the Defendant, Dan Edward Routly, for the crime of which he has been convicted, that is murder in the first degree, be electrocuted until he be dead in the manner directed by the laws of the State of Florida. It is further ordered that the Defendant, Dan Edward Routly, be committed to the custody of the Department of Corrections and be imprisoned until he be electrocuted, until he be dead, in the manner directed by the laws of the State of Florida.

It is further ordered that the Sheriff of Marion County is hereby directed to deliver the said Defendant Dan Edward Routly, to the Department of Corrections, together with a copy of the judgment and sentence

entered in this case.

It is further ordered that the Defendant, Dan Edward Routly, shall pay the sum of one dollar pursuant to Section 943.25 of the Florida Statutes.

The Defendant is advised of his right to appeal from this judgment and sentence within 30 days from this date, and the Public Defender is appointed to represent the Defendant on this appeal.

There being no other matters at this time in this case, the Defendant is remanded to the custody of the Sheriff, pursuant to this judgment and sentence.

BY MR. FOX: Excuse me, Your Honor. For purposes of clarifying the record, I would ask that the Court give Mr. Routly credit for time served from December 5th, 1979, to today's date, in the event that this sentence might at some later date be altered.

BY THE COURT: If the State has no objection, I have no verification of that date. I assume that is the correct date.

BY MR. FITOS: The State would have no objection to credit for time served during the time of custody, if Mr. Fox would submit to the Court that date, and I would be able to check it at that time, in order form.

BY MR. FOX: And, also, if I may beg the Court's indulgence, I just -- again for purposes of clarifying

the record, I ask that if -- realizing you don't have to answer this question for me, if the evidence of aggravating circumstances came from the penalty phase of the trial or from the trial of the case in chief; in other words, the fact that it was committed during the course of a robbery, that was committed to -- in the kidnapping -- is the Court relying on evidence presented during the penalty phase or evidence presented during the trial itself?

BY THE COURT: First of all, with respect to credit for time served, the Defendant will be granted credit for time served. I assume the record will speak for itself as to when that should commence.

BY MR. FOX: And it should.

BY THE COURT: And so far as the matters that the Court has taken into consideration in this case, I believe those have been adequately dictated into the record.

BY MR. FOX: Fine; thank you very much.

BY THE COURT: That will be all at this time.

(Thereupon, the proceedings in the case ended).

C E R T I F I C A T E

STATE OF FLORIDA)

COUNTY OF MARION)

I, CHARLES E. BRANDIES, Certified Shorthand Reporter, Registered Professional Reporter, and Official Court Reporter, do hereby certify that the sentencing in the case of State of Florida versus Dan Edward Routly, Case Number 79-1270, was heard at the time and place set forth in the caption thereof; that I was authorized and did report stenographically the proceedings, and that the foregoing pages, numbered 1 through 28, inclusive, constitute a true and correct transcription of my said stenographic report.

WITNESS MY HAND AND SEAL this 12th day of January, 1980.

Charles E. Brandies

Charles E. Brandies, C.S.R.
Marion County Court Reporter
Ocala, Florida

END OF DOCKET